

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of:

**Application for Certification for the
the Russell City Energy Center**

Docket No. 01-AFC-7

(AFC Accepted 7/11/01)

**ERRATA TO THE PRESIDING MEMBER'S
PROPOSED DECISION
-and-
RESPONSE TO COMMENTS**

The following list of Errata identifies certain edits and other non-substantive changes that clarify the evidence of record described in the Presiding Member's Proposed Decision (PMPD). Most of these edits were based on comments on the PMPD submitted by parties and members of the public, either in writing or at the Committee Conference held in Hayward on August 22, 2002.

RESPONSE TO COMMENTS

Calpine

Calpine stated that it strongly supports the PMPD and offered only a few non-substantive comments and typographical corrections. Applicant added that it has no disagreement with Staff's filed comments with the exception of Staff's recommendation that the Committee reconsider the question of hand-held monitoring for PM10 during construction. Applicant disagrees with such a requirement unless the demonstration program for the Los Esteros project is shown to be effective for monitoring PM10 during construction.

Commission Staff

Staff filed comments recommending that the Committee reconsider the question of hand-held monitoring for PM10 during construction. In addition, Staff will propose language for a Condition of Certification which will incorporate into the condition statements from the PMPD on monitoring, and set a protocol for determining if, and how such monitoring would be required at the Russell City construction site.

Agency Comments

No agencies filed written comments on the PMPD or offered oral comments at the Committee Conference.

Comments from Individuals

Charlie Cameron submitted comments regarding formatting of resumes in the FSA.

Sheila Junge expressed concern as to whether Applicant's agreements with the City of Hayward and with Waste Management Corporation are sufficiently complete to secure the compensatory wetlands addressed in the PMPD. Calpine Development Manager James R. Leahy stated that Applicant has an option to purchase the Waste Management property in question.

Janice Delfino asked if project construction is delayed, will that also delay the project-related wetland restoration projects. Mr. Leahy responded that the various purchases of shoreline wetlands, which Calpine will make pursuant to any Commission permit, will not occur until the commencement of project construction. Thus, a delay in construction would also delay mitigation steps.

Howard Beckman commented that while the project site is at the edge of an industrial corridor, it also abuts a vast area of natural wetlands. He pointed out that his stated concern regarding noise impacts on wildlife pertained specifically to impacts from *operational* noise from the project. He also noted that, contrary to the statement in the PMPD, controversy did exist about mitigation for biological impacts. However, we note that the controversy was not among parties in the case but rather from members of the public, including Mr. Beckman. Finally, he disagrees with the language contained in Condition of Certification BIO-12. His specific concerns are addressed in the section of the Decision on Biological Resources.

LIST OF ERRATA

The Errata will be considered and incorporated by reference into the PMPD, which is scheduled for hearing by the full Commission at its September 11, 2002, Business Meeting. Typographical errors and minor grammatical errors not specifically identified in the Errata will be corrected to the extent possible in due course.

PROJECT PURPOSE AND DESCRIPTION

- Page 8, following the second paragraph, insert the following paragraph:

Although the project site lies within an area zoned for industrial use, significant biological resources areas lie to the west and southwest of the site. These include: Hayward Area Parks and Recreation District's (HARD) salt marsh restoration project and East Bay Regional Parks District's (EBRPD) Cogswell Marsh and Salt Marsh Harvest Mouse Preserve.

GENERAL CONDITIONS

- Page 24, first paragraph, lines 5 through 10:

...compliance conditions, or ownership. ~~The post-certification changes do not include changes related to replacement of the simple-cycle power plant with a combined-cycle power plant pursuant to section 25552 of the Public Resources Code. All facility changes related to replacement of the power plant will be addressed through the review of an Application for Certification for the replacement combined-cycle power plant.~~ Failure to comply with any of the...

Because the Russell City Energy Center will not replace a simple-cycle power plant with a combined –cycle plant, these two sentences should be deleted.

TRANSMISSION SYSTEM ENGINEERING

- Page 69, first paragraph, line 5:

Staff witness ~~Ajoy Guha~~ Jack Caswell sponsored section 5.5...

AIR QUALITY

- Page 95, beginning at top of the page:

~~e)The results of LECEF Demonstration project, once those results are available for review by the Staff and the project owner.~~

c) Review the results of Los Esteros Critical Energy Facility Air Monitoring Demonstration project (LECEF).

d) At least 45 days prior to site mobilization, the applicant shall meet with staff, CMM and CPM for LECEF, and the CPM for RCEC to determine the effectiveness of the PM10 site monitoring for LECEF, and whether a similar Construction Monitoring Demonstration Program should be required during construction of the RCEC. The results of this meeting will be reported in the Fugitive Dust Mitigation Plan.

The CMM shall implement the following procedures for additional mitigation measures...

The language, agreed to by Staff and Applicant, provides a process to apply PM10 monitoring techniques learned as part of the Los Esteros Critical Energy Facility Air Monitoring Demonstration Project to construction practices at the site for the RCEC.

BIOLOGICAL RESOURCES

- Page 141, under “Public Comment,” first paragraph, line 7:

Howard Beckman expressed concern about project-related operational noise impacts to wildlife.

- Page 141, add to the end of the second full paragraph:

...matter is without support. (RT 227-229.) In addition, Mr. Beckman comments that Condition of Certification BIO-12 should contain a clear mandate to mitigate for effects of operational plant noise on wildlife, such as requiring long-term field studies of the effects. However, the Commission does not believe such studies are justified based on the project’s compliance with applicable LORS and the lack of substantial evidence that project operational noise levels, estimated to be no greater than 60.5dBA, will harm wildlife. The Staff’s impact analysis, set forth on pages 4.2-13 through 4.2-15 of the FSA, reviews the available evidence. Staff biologists concluded that the project will have no significant environmental impact to wildlife from operational noise. No substantial evidence of such an impact was offered, by any other party. Therefore, the Commission will not modify the language of Condition of Certification BIO-12.

- Page 142, first full paragraph, third sentence:

Staff indicates that, although a wetlands mitigation conceptually, the plan proposed by Applicant appears sound, ~~but~~ specific details concerning actions necessary to achieve desired objectives still need to be finalized.

- Page 143, under Findings and Conclusions

Based on the uncontroverted evidence of record...

- Page 143, Findings and Conclusions, #3, insert the following after the last sentence:

Furthermore, because construction-related activities associated with managing wetland fill would occur in sensitive species habitat, Applicant must also obtain a Biological Opinion from the U.S. Fish and Wildlife Service.

- Page 143, Findings and Conclusions #5:

5. The Applicant proposes to install bird perch deterrent devices on project surfaces to deter avian predator perching. Applicant will also limit landscaping trees to species that discourage avian predator perching. The Adaptive Management Plan will outline contingent measures to be implemented should the proposed perch deterrent devices and landscaping prove ineffective. These measures will be sufficient to protect sensitive species in habitat near the project site.

- Page 147, Condition BIO-4, Item 17:

17. Written verification that the required habitat compensation has been purchased ~~and donated to EBRPD~~ and a suitable endowment has been provided to manage the habitat compensation acreage in perpetuity;

This correction makes the condition consistent with Condition BIO-10 and ensures the donation to EBRPD after Applicant takes various mitigation steps.

- Page 150, Condition BIO-10:

BIO-10 The project owner shall provide 26.19 acres of habitat to compensate for the loss of upland, freshwater seasonal wetlands ~~and salt marsh habitats~~. To mitigate the permanent and temporary loss of habitat, the project owner shall:

This correction is needed because the Project will not cause a loss of salt marsh habitat.

- Page 152, **BIO-14**, item #4:

4. If needed, identify all measures to be implemented in the Adaptive Management Plan, should monitoring indicate that perch deterrents are ineffective.

This correction includes reference to the Adaptive Management Plan proposed by Applicant and reflected in the FSA on page 4.2-9, first bullet, and on line 5 of the first full paragraph following the third bullet. The adaptive Management Plan is also noted in Condition of Certification BIO-4, under BRMIMP (2), FSA, page 4.2-26.

CULTURAL RESOURCES

- Page 162, Findings and Conclusions #1:

1. ~~No known cultural resources exist in the general project area. No cultural resources known to be eligible for the California Register of Historic Resources exist in the project area.~~

More precise statement of fact.

SOCIOECONOMICS

- Page 206, second full paragraph:

Minorities and people of color represent 64.71 percent ~~and persons of low income comprise 7.2 percent (1990)~~ of the population within a 6-mile radius of the project.

- Page 208, Findings and Conclusions #6:

6. The project will have no significant adverse impacts on minority ~~or low-income~~ populations.

Executive order 12898 addresses low income as well as minority populations.

VISUAL RESOURCES

- Page 217, first full paragraph, line 4:

A 1.1-mile ~~long 230-kV transmission line will travel primarily within the East Shore-Grant transmission line right-of-way, running parallel to the existing line before connecting with the East Shore Substation. portion of this line will be rebuilt to accommodate the addition 230 kV circuits between Enterprise Avenue and the PG&E East Shore Substation.~~

- Page 219, third full paragraph, line 3:

At each KOP, the Staff conducted a visual analysis that considered the following elements: Visual Quality, ~~Viewer Concern, and Viewer Exposure, which combine into a rating of Overall Visual Sensitivity. Visual Sensitivity, Visibility, Viewer Exposure, and Visual Susceptibility~~

- Page 219, third full paragraph, line 6:

To assess the visual changes that the project would cause, Staff considered the following factors: Contrast, Dominance, and View Blockage, which combine into a rating of Overall Visual Change. ~~Dominance Contrast, View, and Blockage~~

- Page 230, Findings and Conclusions #5:

5. The City of Hayward has adopted a negative declaration, which determined that relocation of the KFOX radio towers would not cause significant, unmitigated visual impacts. ~~The relocated KFOX radio towers will not seriously hinder community enjoyment of the shoreline trail at the Hayward Regional Shoreline Park~~

Previous language was drawn from a statement by the Hayward City Manager to the Commission rather than from the language of the City of Hayward's negative declaration.

By Order of the Committee

Dated:

**ENERGY RESOURCES
CONSERVATION AND
DEVELOPMENT COMMISSION**

WILLIAM J. KEESE, Chairman
Presiding Member
Russell City Energy Center
AFC Committee

ROBERT PERNELL, Commissioner
Associate Member
Russell City Energy Center
AFC Committee